suppose that she intended to pay her debts out of it that her contract had any validity. Her creditor, therefore, still had to run the risk of the contract turning out to be invalid and inoperative because at the time she made it, she had not sufficient property to enable her to enter into it.

"A further difficulty arose. Suppose a married woman had made a contract which bound her separate property. Could it be enforced against her property which she was still possessed of after her husband's death? Was this (which was not strictly separate property at all) liable under the contract? The mischief had become so great that in 1893 the last of the series of Acts was passed, which got rid of the difficulty, and since that time it has not been necessary and is not necessary now to prove, in order to enforce a contract made by a married woman, that she was at the time possessed of any separate property at all." . . .

Mr. Lush continues: "I had intended, had I time, to criticise the somewhat narrow construction which was placed upon the Act of 1882, and give you reasons for thinking that it was interpreted in a way never contemplated by the legislature. I can only, in the short time at my disposal, say this, that the words '*in respect of and to the extent of her separate property*,' which appear to qualify the contracting capacity of a married woman, always seemed to me to have been only inserted in the Act *to avoid the consequence of the non-separate property of women already married being affected* by the change in the law. A woman married since 1882 has and can have no property that is not her separate property. There is nothing technical now in the expression '*separate property*,' and if a married woman can carry on a trade by contracting *in respect of her separate property* as she now can, it seems impossible to suppose that the legislature contemplated that her liability was other than the ordinary personal liability which any other contractor assumes. However, the subject, though it is not without interest, has ceased since the Act of 1893 was passed to be of much practical importance."

In Virginia the new Married Woman's Act, to be found in the Acts of 1889–1900, page 1240, which practically emancipates married women, has made the ruling of the Virginia Court of Appeals in the *Hirth* case of little importance now with us. See 6 Va. Law Register, page 485.

DANIEL GRINNAN.

Richmond, Va.

USE OF DEFECTIVE STREET AS CONTRIBUTORY NEGLIGENCE PER SE.
Winchester v. *Carroll.*

Editor Virginia Law Register:

The decision of the Court of Appeals in the case of the *City of Winchester* v. *Carroll*, recently decided at Richmond [3 Va. Sup. Ct. Rep. 555], seems to establish the doctrine that previous knowledge on the part of a plaintiff of the dangerous condition of the sidewalk, if the jury believes such knowledge is proven, constitutes contributory negligence *per se*, and that the jury should be instructed that if they believe such knowledge has been proven, they should find for the defendant.

The court says: "In view of the tendency of the evidence to affect the plaintiff with knowledge of the dangerous condition of the sidewalk at the place of the accident, the jury ought to have been told, that if they believed from the evidence

that the plaintiff had such knowledge, they should find a verdict for the defendant." Is this sound law?

Black in his new work on Law and Practice in Accident Cases (sec. 329), says: "Contributory negligence is usually a question of fact for the jury, in view of all the facts and circumstances proven in the case." This is true even if the plaintiff knew of the danger (Id.). At sec. 349, the same author says: "It is not contributory negligence *per se* to use a highway, street or bridge that is known to be defective, unless the danger was so apparent that in the use of ordinary care, one ought not to have undertaken the passage. . . . . Whether one using a highway or street, with knowledge of the defects, is guilty of contributory negligence, is usually a question for the jury." (Id.).

In *Williamsport* v. *Lisk* (Ind.), 1 Mun. Corp. Cases, 60; *Id.* 483-4, 490; it is said: "Knowledge of a defect does not necessarily preclude a recovery."

In the case of *Gordon* v. *Richmond*, 83 Va. 436, the court says: "Passer has a right to presume the streets and sidewalks to be in safe condition, and is not required to be observant of their condition. And though he has actual knowledge of their bad condition, their use by him is not *per se* negligence, and does not impose upon him the exercise of extraordinary care."

Black's Law & Practice in Accident Cases, sec. 349, says: "Whether one using a highway or street, with knowledge of the defects, is guilty of contributory negligence, is usually a question for the jury. Previous knowledge of a defect, although it has an important and oftentimes decisive bearing on the question, is not conclusive, and the plaintiff may recover, notwithstanding." See also 7 Am. and Eng. Ency. L. (2d ed.) 412: "Contributory negligence is usually a question of fact for the jury, in view of all the facts and circumstances proven in the case." (Black, sec. 329). See Beach on Contributory Negligence (3d ed.), chap. 16, sec. 444, *et seq.*; Shearm. & Redf. on Negligence (5th ed.), sec. 114; Thomas on Negligence, p. 365, and especially Black, sec. 279.

In view of these authorities and numerous others that could be cited, has not the court laid down the rule too broadly in holding that previous knowledge constitutes contributory negligence *per se*? I am not counsel in the case, but have watched it with interest, and would like to have the views of the profession on this question through the REGISTER.

Winchester, Va. A. J. TAVENNER.

A CORRECTION.

Editor Virginia Law Register:

DEAR SIR—My attention has been called to stypographical error in the report of the case of *Marshall* v. *Valley R. Co.*, 97 Va. 653, 659, which may mislead some of the profession. In line fourteen from the top of page 659 the word "now" should be "not," so as to make the sentence read "As the trial court set the verdict aside, the case is *not* before us as upon a demurrer to the evidence," &c. I take this method of calling attention to the error in the hope that each lawyer will at once make the proper correction in his official report. The case is correctly reported in 5 Va. Law Reg. 624, and, on account of the above error, will be re-reported in 99 Va. Respectfully,

M. P. BURKS.